No. 92-93

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CURTIS SNEEDE, *et al.*,
Petitioners,

v.

KENNETH KIZER, Director, California Department of Health Services,

and

LOUIS W. SULLIVAN, M.D., Secretary, U.S. Department of Health and Human Services,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The federal respondents agree that in *Maine v. Thiboutot*, 448 U.S. 1 (1980), this Court squarely held that 42 U.S.C. § 1983 encompasses claims based on violations of the Social Security Act. Op. Cert. at 5. Rather than acknowledge that the Ninth Circuit's holding is in direct and inexplicable conflict with *Maine*, however, the federal respondents attempt to characterize that holding as resting on a procedural defect—"that petitioners failed to allege a Section 1983 claim in their complaint." Op. Cert. at 6. But that characterization of the Ninth Circuit's decision is insupportable, both as a matter of fact and law.

Petitioners' First Amended Complaint expressly stated in ¶ 1 that "this suit is brought, pursuant to 42 U.S.C. § 1983, to redress the deprivation under color of state law of rights, privileges, and immunities secured to plaintiffs by the laws of the United States." Petitioners' Complaint also stated all of the elements of a § 1983 claim, since it alleged that the state and federal respondents, acting under color of law, deprived petitioners of their rights under the Medicaid Act. See *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Accordingly, the only possible pleading "defect" to which the federal respondents could be referring is petitioners' failure to include a separate claim for relief that was expressly and solely predicated on § 1983. But no court has ever imposed such a pleading requirement before, and there is no reason to believe that the Ninth Circuit, without comment would impose such a novel and unprecedented pleading burden upon civil rights plaintiffs.

Under Fed.R.Civ. Pro. 54(c), "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." Accordingly, as the Ninth Circuit has previously held, a claim for relief is stated under § 1983 as long as the elements of that claim are alleged, even if plaintiffs have not separately denominated a § 1983 claim in their pleadings. *See, e.g., McCalden v. California Library Assoc.*, 955 F.2d 1214, 1223-24 (9th Cir. 1990); *Haddock v. Bd. of Dental Examiners*, 777 F.2d 462, 464 (9th Cir. 1985).

Application of this liberal pleading rule is particularly appropriate in cases involving claims for attorneys' fees under 42 U.S.C. § 1988. As this Court held in *Maher v. Gagne*, 448 U.S. 122 (1980), attorneys' fees are available under 42 U.S.C. § 1988 to prevailing plaintiffs in any action for which § 1983 provides a remedy, even if the court did not in fact predicate its remedy on § 1983:

> [Section] 1988 provides that attorney's fees may be awarded to the prevailing party "[i]n any action

> or proceeding to enforce [§ 1983]." Although the reference to actions "to enforce" § 1983 is somewhat imprecise in light of the fact that § 1983 does not itself create substantive rights, the legislative history makes it perfectly clear that the Act was intended to apply in any action for which § 1983 provides a remedy. See *Maine v. Thibotout*, 448 U.S. at 9-10.

448 U.S. at 129 n.11; see also *Americans United for Separation of Church and State v. School District*, 835 F.2d 627, 631 (6th Cir. 1987) ("The mere failure to plead or argue reliance on § 1983 is not fatal to a claim for attorney's fees if the pleadings and evidence do present a substantial . . . claim for which § 1983 provides a remedy . . ."). The federal respondents' strained characterization of the Ninth Circuit's ruling would thus place the Ninth Circuit's ruling in conflict with *Maher v. Gagne as well as Maine v. Thibotout.*[1]

Although the federal respondents contend that the Ninth Circuit's decision rested on a pleading defect rather than a conflict with *Maine v. Thibotout*, they do not contend that the Ninth Circuit's decision, as so characterized, was correct. See Op. Cert. at 7 & n.4. Rather, the federal respondents merely substitute one patently erroneous rationale for another. But in either case, the Ninth Circuit's decision—which was issued without the benefit of any briefing or argument by the parties—is completely insupportable. Either it conflicts with *Maine v. Thibotout*'s holding that § 1983 encompasses Medicaid Act claims or it conflicts with *Maher v. Gagne* and the numerous decisions holding that a claim for relief is

[1] *See also Conley v. Gibson*, 355 U.S. 41, 48 (1957) ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits"); *Schlesinger v. Councilman*, 420 U.S. 738, 744 n.9 (1975) (finding federal question jurisdiction where plaintiffs did not cite § 1331 or allege amount in controversy where "[t]he facts alleged and the claim asserted nonetheless were sufficient to demonstrate the existence of a federal question").

stated as long as plaintiffs allege facts sufficient to state the elements of such a claim.

For the reasons stated above and in our Petition for Certiorari, this Court should summarily reverse the Ninth Circuit and order the cases remanded to district court for a determination of petitioners' eligibility for attorneys' fees. The Ninth Circuit's ruling, which imposes enormous financial consequences on the Legal Aid Society of Alameda County, is wholly without legal jurisdiction, as the federal respondents essentially concede. While this Court does not usually sit to reverse errors, the court of appeal's failure to follow controlling Supreme Court precedent is so palpably clear that the Court should exercise its power of supervision by granting *certiorari* and summarily reversing under Supreme Court Rule 16.1.

Respectfully submitted,

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